



Arizona Medical Board

9545 East Doubletree Ranch Road • Scottsdale, Arizona 85258
Home Page: <http://www.azmd.gov>

Telephone (480) 551-2700 • Fax (480) 551-2705 • In-State Toll Free (877) 255-2212

FINAL MINUTES FOR REGULAR SESSION MEETING Held on December 3, 2008 and December 4, 2008 9535 E. Doubletree Ranch Road • Scottsdale, Arizona

Board Members

William R. Martin III, M.D., Chair
Douglas D. Lee, M.D., Vice Chair
Dona Pardo, Ph.D., R.N., Secretary
Robert P. Goldfarb, M.D., F.A.C.S.
Patricia R. J. Griffen
Andrea E. Ibáñez
Ram R. Krishna, M.D.
Todd A. Lefkowitz, M.D.
Lorraine L. Mackstaller, M.D.
Paul M. Petelin Sr., M.D.
Germaine Proulx
Amy J. Schneider, M.D., F.A.C.O.G.

EXECUTIVE DIRECTOR'S REPORT

Lisa Wynn, Executive Director, informed the Board that Substantive Policy Statement #13 regarding duty to report has generated interest and questions from several hospital administrators. She thanked Dr. Goldfarb for his help in drafting the Statement. Ms. Wynn provided the Board with a budget update and stated that in late October 2008, the Legislature requested the Agency prepare a budget reduction plan that would reduce the Agency's budget by fourteen percent. Ms. Wynn stated the Agency has not been instructed to implement the budget reduction; however, she stated that if the plan is enforced, it may result in staff reductions. Ms. Wynn explained that she is concerned with implementing the budget reduction as it may compromise public health and safety. She informed the Board that the law firm of Quarles and Brady has been retained to represent a number of healthcare associations to make a claim for the monies swept from licensing boards in April and June of 2008.

Ms. Wynn informed the Board of the new process in reviewing the Board's draft meeting minutes in an attempt to have them available to the public and posted to the Board's website timelier. Ms. Wynn recognized and commended the Agency's Board Operations department for their hard work in preparing board meetings. Dr. Pardo also commended Board staff for its hard work throughout the year while working under tremendous circumstances. She noted that the Agency's Case Management Office has reduced the number of open investigations to 337. Ms. Wynn also welcomed Board members to join the Agency for its holiday celebration that will take place at the Arizona State Veteran's Home in Phoenix, Arizona on Tuesday, December 9, 2008 at 2:00 p.m.

Dr. Pardo recommended beginning the board meetings on Wednesday at 9:30 a.m. Dr. Martin requested Board staff agendaize this item for the Board's next regular session meeting for discussion and possible action.

CHAIR'S REPORT

Dr. Martin announced that Board elections will take place in February 2009 and instructed Board members to contact Ms. Wynn with any nominations or if they wish to seek office. Dr. Martin informed Board members that there are four offices on the Executive Council available that include Chair, Vice Chair, Secretary, and the Member-at-Large.

PHYSICIAN ASSISTANTS' EDUCATION AND CERTIFICATION REQUIREMENTS AND THEIR ROLE IN HEALTHCARE

Joan M. Reynolds, M.M.S, P.A.-C, informed the Board of the involvement of physician assistants (PAs) in the healthcare system. She stated that the idea of PAs first began during the Vietnam War and the first PA students graduated from an accredited school in 1965. She stated that PAs are not independent practitioners and cannot be licensed in Arizona without graduating from an accredited school and are required to take their boards every six years in order to retain their certification. Ms. Reynolds informed the Board that PAs can own their own practice and hire their supervising physician; however, the supervisor needs to be approved by the Arizona Regulatory Board of Physician Assistants. Dr. Martin questioned Ms. Reynolds as to how physicians can better support PAs. Ms. Reynolds stated that an area of concern involves the supervision of PAs and that physicians can benefit by

obtaining more education in terms of how PAs practice, their scope of practice, and required supervision. Dr. Martin thanked Ms. Reynolds for her presentation.

DRUG THERAPY MANAGEMENT RULE CHANGES

Ms. Wynn provided the Board with rule changes proposed by the Pharmacy Board and stated that statutes require that the Arizona Medical Board and Osteopathic Board approve any rule changes pertaining to the Pharmacy Board.

MOTION: Dr. Mackstaller moved to approve the Drug Therapy Management Proposed Rule Changes.

SECONDED: Ms. Ibáñez

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

TROCAR INJURY PHYSICIAN ALERT

William Wolf, M.D., Chief Medical Consultant, informed the Board that several cases regarding trocar injuries have been investigated by the Board. He stated that a Physician Alert will assist surgeons in how to identify and avoid these types of injuries and recommended the Board post the document to its website. Dr. Goldfarb agreed with the language of the first paragraph, but recommended removing the last sentence of the first paragraph. He spoke against a press release that attempts to be a prescription for performing surgery, as he stated this should be addressed by surgical societies such as the American College of Surgeons. Dr. Krishna agreed with bringing the Board's concerns forth, but spoke against detailing how the injuries should be avoided and what a surgeon should do when a trocar injury is indicated. Dr. Petelin recalled five cases that involved trocar injuries, four of which resulted in patient deaths and stated that the Board should be proactive in order to protect the public. Dr. Lee proposed including examples of cases the Board has adjudicated. Dr. Schneider requested that "large" be removed from the first sentence of the first paragraph. Dr. Goldfarb agreed. Board members thanked Drs. Petelin and Wolf for their work in drafting the document.

MOTION: Dr. Goldfarb moved to approve the Trocar Injury Physician Alert, as amended.

SECONDED: Dr. Petelin

Dr. Lee suggested retitling the document to Laparoscopic Surgeons rather than General Surgeons. Dr. Schneider recommended forwarding the document to several hospitals so that it could be posted in operating rooms.

VOTE: 11-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

LEGAL ADVISOR'S REPORT

Jennifer Boucek, Assistant Attorney General, Legal Advisor, reported that a number of Formal Hearings were held since the Board's October 2008 meeting. She informed the Board of oral argument provided at the Court of Appeals for a case regarding W. Neil Chloupek, M.D., that went very well and stated that they are hopeful for a favorable decision. She stated this was a case in which the Board came to a different conclusion than the Administrative Law Judge's (ALJ's) recommendation.

Attorney's Fee Award by the Office of Administrative Hearings

Ms. Boucek reported that the ALJ made a decision to award attorney's fees in a particular case in which the Board had previously paid Hearing costs. Ms. Wynn reported that the Arizona Department of Administration Risk Management paid the previous balance and is in the process of paying the attorney's fees. Dr. Martin stated he found the after action meetings with Board counsel very helpful and questioned how the information can be disseminated to other Board members. Ms. Boucek recommended Board members who participate in the after action meetings identify which areas are most helpful and then agendaize those items for discussion at a future Board meeting.

BOARD EDUCATION SEMINAR

Emma Mamaluy, Assistant Attorney General, presented part two of the Board's Educational Seminar regarding Formal Interviews. She reported that once the investigation is complete the Staff Investigational Review Committee (SIRC) reviews the case and makes a recommendation. If SIRC recommends less than a year suspension or less than Revocation, the physician is sent a letter providing the physician with three options: Formal Interview, Proposed Consent Agreement, or a Formal Hearing. Board members were informed that these types of disciplinary recommendations may include a Letter of Reprimand, Decree of Censure (either may include probation or a practice restriction), and Probation may be issued as discipline in and of itself. Restitution to the patient is also an option. When an Advisory Letter is recommended, the matter is sent directly to the Board as Advisory Letters are non-disciplinary and the physician is not required to be present for the Board to vote on the matter. In the event that SIRC recommends Revocation or more than a year suspension, the Executive Director has the authority to refer the matter to Formal Hearing; therefore, the Board may not see these cases until after the Hearing is conducted.

Ms. Mamaluy informed the Board that there is no statutory requirement for the Board to offer the physician a consent agreement or invite for a Formal Interview, as the Board has the authority to send all cases to Formal Hearing. Ms. Mamaluy stated that the Board may refer a case to Formal Hearing if concerns for public health and safety arise during a Formal Interview. Physicians

have the right to due process as they have property interest in their license. Therefore, they are requested to waive the right to Formal Hearing when accepting the invitation to Formal Interview. Board members were informed that cases in which the Board rejects the recommended Advisory Letter do not need to return to SIRC; however, the Board should articulate the desired discipline to allow staff the opportunity to offer the physician a consent agreement. Ms. Mamaluy provided the Board with an overview of physicians' appeal rights after an Interview.

APPROVAL OF MINUTES

MOTION: Dr. Pardo moved to approve the October 8-9, 2008 Regular Session Meeting, Including Executive Session.

SECONDED: Dr. Lee

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

Dr. Pardo commented that the Board's minutes were well written. Ms. Wynn reiterated that any proposed changes to the Board's draft minutes may be forwarded to Christi Banyas, Investigational Review Assistant Manager. She informed the Board that after preliminary Board and Legal review, the draft minutes will be posted to the Board's website.

ADVISORY LETTERS

MOTION: Ms. Proulx moved to issue an Advisory Letter in item numbers 2, 5, 6, 7, 9, 13, 14, 17, 20, 22, 24, 25, 28, 30, 31, and 34.

SECONDED: Dr. Krishna

VOTE: 11-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
1.	MD-08-0229A	GREGORY M. GRANT, M.D.	28675	Reject the recommendation for an Advisory Letter and invite the physician for a Formal Interview.

Dr. Martin was recused from this case. Gerald Moczynski, M.D., Medical Consultant, summarized that the concerns in this case involved inadequate postoperative follow up and inadequate medical records. Dr. Petelin found it egregious that Dr. Grant failed to follow up on the patient postoperatively when complications occurred during surgery. The Board discussed requiring Dr. Grant to obtain additional education with regard to the necessity of postoperative care. Drs. Goldfarb and Krishna concurred with Dr. Petelin's concerns and clarified that the standard of care requires a physician to follow up with a patient in the hospital postoperatively. Dr. Goldfarb suggested inviting Dr. Grant for a Formal Interview.

MOTION: Dr. Goldfarb moved to reject the recommendation for an Advisory Letter and invite the physician for a Formal Interview.

SECONDED: Dr. Petelin

VOTE: 10-yay, 0-nay, 0-abstain, 1-recuse, 1-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
2.	MD-08-0281A	JONATHAN A. BOLTON, M.D.	35296	Issue an Advisory Letter for inappropriate treatment of a possible fracture and for failure to recognize a potential fracture on x-ray. This was a one time occurrence that does not rise to the level of discipline.
3.	MD-08-0232A	MARION L. SULLIVAN, M.D.	17124	This matter was tabled.

Dr. Goldfarb questioned if the patient's EKG was abnormal, whether Dr. Sullivan should have instructed his physician assistant to give nitrates to the patient and observe for pain relief, and whether the patient should have been further hospitalized to obtain a cardiology consultation.

MOTION: Dr. Goldfarb moved to table this matter.

SECONDED: Dr. Lee

VOTE: 11-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
4.	MD-08-0125A	MARK E. SEXTON, M.D.	18760	Issue an Advisory Letter for failure to consider CVA or TIA in a patient with weakness and speech difficulty. This was a one time occurrence that does not rise to the level of discipline. Obtain 20-25 hours non-disciplinary CME in cerebrovascular disease.

Dr. Petelin was recused from this case. Dr. Sexton spoke during the call to the public. Kathleen Coffey, M.D., Medical Consultant, summarized that Dr. Sexton failed to diagnose and treat a stroke in an elderly female, resulting in significant injury to the patient. Drs. Goldfarb and Krishna expressed their concerns with Dr. Sexton's failure to consider a stroke in a patient with TIA, as this may, in a significant number of cases, go on to a completed stroke within 24 hours.

MOTION: Dr. Goldfarb moved to issue an Advisory Letter for failure to consider CVA in a patient with weakness and speech difficulty. This was a one time occurrence that does not rise to the level of discipline. Obtain 20-25 hours non-disciplinary CME in cerebrovascular disease.

SECONDED: Dr. Mackstaller

VOTE: 10-yay, 0-nay, 0-abstain, 1-recuse, 1-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
5.	MD-07-0145A	MARVIN F. EWY, M.D.	28561	Issue an Advisory Letter for allowing inappropriate personnel to administer IV medication. While there is insufficient evidence to support discipline, the Board believes that continuation of the activities that led to the investigation may result in further Board action.
6.	MD-07-0652A	NEIL E. KRAMER, M.D.	27950	Issue an Advisory Letter for failure to properly treat and address the post hospitalization concerns of a patient with acute coronary syndrome. This matter does not rise to the level of discipline.
7.	MD-08-0019A	PARINA GUPTA CHO, M.D.	28969	Issue an Advisory Letter for missing a pelvic hematoma on CT scan. This was a one time occurrence that does not rise to the level of discipline.
8.	MD-08-0262A	SERGIO F. SOTO, M.D.	37164	Issue an Advisory Letter for performing an inadequate breast examination. This matter does not rise to the level of discipline.

Dr. Petelin found it appropriate for Dr. Soto to perform a breast examination when examining the patient for cardiac clearance and considered dismissing this case.

MOTION: Dr. Petelin moved for dismissal.

SECONDED: Dr. Schneider

Dr. Mackstaller spoke against the motion and stated that Dr. Soto's performance of the breast examination was inadequate. Dr. Krishna agreed. Dr. Schneider spoke in favor of the motion and stated that the medical records indicated that the exam was conducted over the patient's gown. She stated that it is best practice to perform a complete breast exam on a disrobed patient, but not the standard of care. Dr. Pardo questioned whether Dr. Soto should obtain additional CME in the performance of breast examinations.

VOTE: 3-yay, 8-nay, 0-abstain, 0-recuse, 1-absent.

MOTION FAILED.

Dr. Goldfarb noted the allegation was not substantiated that Dr. Soto had inappropriately touched her as she claimed while he performed the examination over her clothing and, therefore, should not be included in the motion. Board members noted that there was no evidence to support the allegation; therefore, this was not substantiated.

MOTION: Dr. Mackstaller moved to issue an Advisory Letter for performing an inadequate breast examination. This matter does not rise to the level of discipline.

SECONDED: Dr. Krishna

Dr. Schneider spoke against the motion. Dr. Pardo expressed concern that the breast examination was allegedly performed over the patient's clothing.

VOTE: 8-yay, 3-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
9.	MD-08-0124A	STEPHEN E. HOCHEDER, M.D.	28710	Issue an Advisory Letter for missing a medial malleolar fracture on x-ray. This was a one time occurrence that does not rise to the level of discipline.
10.	MD-08-0005A	LAURIE B. WESTON, M.D.	21811	Dismiss.

Dr. Coffey summarized that Dr. Weston failed to properly evaluate, treat, and refer the patient for suicidal ideation. The Board noted that the patient subsequently attempted suicide, but was unsuccessful. Dr. Petelin found that this case does not rise to the level of an Advisory Letter and considered dismissal, noting that Dr. Weston has no prior Board history.

MOTION: Dr. Petelin moved for dismissal.

SECONDED: Dr. Krishna

VOTE: 11-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
11.	MD-08-0114A	ROBERT D. SEGAL, M.D.	22132	Issue an Advisory Letter for failing to consider the diagnosis of DVT and for failure to order an ultrasound on a patient with calf pain following an ankle injury. This was a one time occurrence that does not rise to the level of discipline.

Dr. Segal and his attorney Steve Myers spoke during the call to the public. Dr. Lee stated that Dr. Segal should have had a higher index of suspicion for possible DVT in this patient. Dr. Moczynski stated that clinically DVT is very difficult to diagnose. Dr. Mackstaller stated that the patient deserved DVT to be considered as the diagnosis.

MOTION: Dr. Lee moved to issue an Advisory Letter for failing to consider the diagnosis of DVT and for failure to order an ultrasound on a patient with calf pain following an ankle injury. This was a one time occurrence that does not rise to the level of discipline.

SECONDED: Ms. Proulx

VOTE: 11-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
12.	MD-08-0140A	BARBARA A. LEDNICKY, M.D.	22344	Dismiss.

Dr. Petelin stated he was impressed with Dr. Lednický's response to the complaint and the quality of care rendered to this patient.

MOTION: Dr. Petelin moved for dismissal.

SECONDED: Dr. Lee

VOTE: 10-yay, 1-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
13.	MD-08-0200A	DANIEL L. ROWLAND, M.D.	28887	Issue an Advisory Letter for inadequate post-surgical follow up. This was a one time occurrence that does not rise to the level of discipline.
14.	MD-08-0225A	DEBORAH L. BALDEMOR, M.D.	26429	Issue an Advisory Letter for inadequate documentation. This was a one time occurrence that does not rise to the level of discipline.
15.	MD-08-0139A	GORDON D. DAVIS, M.D.	12102	Dismiss.

Dr. Petelin stated that he knows Dr. Davis, but it would not affect his ability to adjudicate the case. Dr. Goldfarb pulled this case for discussion and noted that there is no requirement for the physician to inform an operative patient of his Hepatitis C status. However, Dr. Goldfarb questioned whether the informed consent was adequate. Dr. Mackstaller stated that there had to have been a break in his sterile procedure for Dr. Davis to have transmitted the virus to the patient. Dr. Pardo stated that she was also concerned with the informed consent. The Board questioned whether it should table this matter to obtain additional information regarding the duty to inform the patient of a transmittable disease such as Hepatitis C. Dr. Schneider pointed out that the American College of Obstetrics and Gynecology published information regarding this subject that was reaffirmed in 2008 that indicates healthcare workers are not required to restrict professional activities.

MOTION: Dr. Pardo moved to table this matter.

SECONDED: Ms. Proulx

Board members noted that Dr. Davis indicated in his response to the complaint that he has since changed his practice in that his informed consent forms disclose his Hepatitis C status. The Board discussed addressing this issue at a later date; therefore, Dr. Pardo withdrew her motion.

MOTION: Dr. Krishna moved for dismissal.

SECONDED: Dr. Mackstaller

VOTE: 11-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

The Board instructed Board staff to place this issue on an upcoming agenda for discussion. Ms. Boucek reported to the Board that she will research the issue and provide information to the Board at a future meeting.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
16.	MD-08-0052A	GERALD R. SHOCKEY, M.D.	20274	Issue an Advisory Letter for inadequate medical records. This was a one time occurrence that does not rise to the level of discipline.

Dr. Shockey spoke during the call to the public. Carol Peairs, M.D., Medical Consultant, informed the Board that there is no legal requirement to have a chaperone present while conducting pelvic examinations. Dr. Shockey indicated that he typically has a chaperone present during pelvic examination; however, this was not documented in the medical records.

MOTION: Dr. Petelin moved to issue an Advisory Letter for inadequate medical records. This was a one time occurrence that does not rise to the level of discipline.

SECONDED: Dr. Krishna

VOTE: 11-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
17.	MD-08-0391A	KEVIN S. KLOPFENSTEIN, M.D.	15403	Issue an Advisory Letter for performing a biopsy of the duodenum without

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
				proper indication. This was a one time occurrence that does not rise to the level of discipline.
18.	MD-07-1133A	LAWRENCE D. L'HEUREUX, M.D.	27991	Issue an Advisory Letter for inadequate medical records. This was a one time occurrence that does not rise to the level of discipline.

Kathleen Coffey, M.D., Medical Consultant, stated it was alleged that Dr. L'Heureux documented misinformation in the patient's chart and that he provided inappropriate care. She stated that it was determined that his recordkeeping was not complete with regard to the patient's history.

MOTION: Dr. Petelin moved to issue an Advisory Letter for inadequate medical records. This was a one time occurrence that does not rise to the level of discipline.

SECONDED: Ms. Ibáñez

VOTE: 11-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
19.	MD-08-0221A	LEE B. MC GAREY, M.D.	25347	Dismiss.

Dr. Lee was recused from this case. Attorney Paul Forrest spoke during the call to the public. Dr. Peairs summarized that language delays were noted by Dr. Mc Garey; however, no action was taken. Dr. Krishna found that the developmental delays could have been noted timelier. Dr. Mackstaller noted the patient's parents were noncompliant and questioned if that contributed to the delay.

MOTION: Dr. Mackstaller moved for dismissal.

SECONDED: Dr. Petelin

Dr. Krishna spoke against the motion and stated that issuing an Advisory Letter would be more appropriate.

VOTE: 5-yay, 4-nay, 1-abstain, 1-recuse, 1-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
20.	MD-08-0053A	MARK K. PATTON, M.D.	23562	Issue an Advisory Letter for failure to follow up on a chest x-ray and for inadequate documentation. This matter does not rise to the level of discipline.
21.	MD-08-0022A	PHILIP L. JOHNSON, M.D.	16267	Dismiss.

Dr. Goldfarb noted that two outside medical consultants (OMCs) reviewed this case for quality of care concerns. The first OMC report and summary was inconclusive and the second OMC identified deviations from the standard of care, but recommended the case either be dismissed or the Board issue the physician an Advisory Letter. Dr. Goldfarb noted that Dr. Johnson has no prior Board history and considered dismissing this case.

MOTION: Dr. Goldfarb moved for dismissal.

SECONDED: Dr. Pardo

VOTE: 11-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
22.	MD-08-0231A	PRATIK M. PATEL, M.D.	31431	Issue an Advisory Letter for failure to adequately supervise medical assistants that led to misidentification of a patient resulting in incorrect instillation of BCG into the patient's bladder. This was a one time occurrence that does not rise to the level of discipline.
23.	MD-08-0296A	QI ZHANG, M.D.	36181	Issue an Advisory Letter for placing an IUD in a nulliparous patient with a uterus sounding to 12cm and for failure to recognize the possibility of perforation. This was a one time occurrence that does not rise to the level of discipline. Obtain 10 hours non-disciplinary CME in IUD placement.

AL spoke during the call to the public. Dr. Pardo questioned whether a residency is required for practicing gynecology. She proposed requiring Dr. Zhang to obtain additional education regarding the placement of IUDs. Dr. Schneider noted that a uterine perforation is a known complication of IUD placement. Dr. Martin spoke in favor of issuing an Advisory Letter and requiring Dr. Zhang to obtain non-disciplinary CME in IUD placement.

MOTION: Ms. Proulx moved to issue an Advisory Letter for placing an IUD in a nulliparous patient with a uterus sounding to 12cm and for failure to recognize the possibility of perforation. This was a one time occurrence that does not rise to the level of discipline. Obtain 10 hours non-disciplinary CME in IUD placement.

SECONDED: Dr. Pardo

VOTE: 11-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
24.	MD-08-0329A	RICHARD B. TODHUNTER, M.D.	31953	Issue an Advisory Letter for failure to inform the patient of a test result in a timely manner and failure to properly treat strep pharyngitis. This was a one time occurrence that does not rise to the level of discipline.
25.	MD-08-0076A	RIYAZ A. SUMAR, M.D.	32702	Issue an Advisory Letter for failing to order the proper labs in a hypertensive patient on lisinopril and for inadequate medical records. This was a one time occurrence that does not rise to the level of discipline.
26.	MD-07-1029A	SHAM M. VENGURLEKAR, M.D.	20227	Reject the recommended Advisory Letter and invite the physician for a Formal Interview.

Dr. Goldfarb questioned whether it was the standard of care to manipulate an arthritic hip. Dr. Moczynski stated that it is not. Dr. Goldfarb stated that this case may rise to the level of discipline and recommended inviting the physician for a Formal Interview.

MOTION: Dr. Goldfarb moved to reject the recommended Advisory Letter and invite the physician for a Formal Interview.

SECONDED: Dr. Krishna

VOTE: 10-yay, 0-nay, 1-abstain, 0-recuse, 1-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
27.	MD-07-1115A	STEVEN C. BURNS, M.D.	15957	Issue an Advisory Letter for failing to adequately supervise PAs and for failing to order a GI consultation for a patient with iron deficiency and anemia. This was a one time occurrence that does not rise to the level of discipline.

Dr. Pardo questioned whether the PA involved in this case was referred to the Arizona Regulatory Board of PAs. Board staff informed the Board that the PA had been referred.

MOTION: Dr. Pardo moved to issue an Advisory Letter for failing to adequately supervise PAs and for failing to order a GI consultation for a patient with iron deficiency and anemia. This was a one time occurrence that does not rise to the level of discipline.

SECONDED: Dr. Krishna

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
28.	MD-07-0883A	STEVEN P. PARKER, M.D.	29606	Issue an Advisory Letter for failure to follow up on a CT scan. This was a one time occurrence that does not rise to the level of discipline.
29.	MD-08-0062A	WILLARD R. CARNAHAN, M.D.	13209	Issue an Advisory Letter for failing to recheck a CBC and WBC on a postoperative patient with a rising white blood cell count. This was a minor or technical violation that does not rise to the level of discipline.

Dr. Carnahan spoke during the call to the public. Dr. Wolf stated that Dr. Carnahan should have repeated the white blood cell count prior to discharging the patient.

MOTION: Dr. Lee moved to issue an Advisory Letter for failing to recheck a CBC and WBC on a postoperative patient with a rising white blood cell count. This was a minor or technical violation that does not rise to the level of discipline.

SECONDED: Ms. Proulx

VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
30.	MD-07-1097A	TERESA L. JACKSON, M.D.	32627	Issue an Advisory Letter for inadequate medical records. This was a one time occurrence that does not rise to the level of discipline.
31.	MD-08-0506A	ARMITY A. SIMON, M.D.	20603	Issue an Advisory Letter for inadequate documentation of informed consent and inadequate documentation of preoperative symptoms. This was a one time occurrence that does not rise to the level of discipline.
32.	MD-08-0633A	KEVIN S. DOYLE, M.D.	24495	Issue an Advisory Letter for failing to appropriately respond to an abnormal lab test and for failing to provide medical records to a patient in a timely manner. This was a one time occurrence that does not rise to the level of discipline.

Dr. Doyle spoke during call to the public. Dr. Peairs stated that the patient was asymptomatic when seen by Dr. Doyle and had abnormal lab studies and; therefore, recommended the patient return in three months for repeat labs. However, the patient returned three weeks later in a worsening state.

MOTION: Dr. Lee moved to issue an Advisory Letter for failing to appropriately respond to an abnormal lab test and for failing to provide medical records to a patient in a timely manner. This was a one time occurrence that does not rise to the level of discipline.

SECONDED: Dr. Mackstaller

VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
33.	MD-08-0202A	LAWRENCE S. KAHN, M.D.	15637	Issue an Advisory Letter for failing to confirm the treatment plan and for failure to perform the appropriate and correct procedure. This was a one time occurrence that does not rise to the level of discipline.

Attorney Mike Ryan spoke during the call to the public. Drs. Martin and Pardo stated they were concerned that this case was equivalent to wrong-site surgery.

MOTION: Dr. Martin moved to reject the recommended Advisory Letter and instructed Board staff to offer Dr. Kahn a Consent Agreement for a Letter of Reprimand for failing to confirm treatment plan and for failure to perform the appropriate and correct procedure. Should the physician decline the consent agreement, invite for a Formal Interview.

SECONDED: Dr. Pardo

Dr. Schneider spoke against the motion and noted that Advisory Letter #22 involved a similar issue in which the patient received the wrong medical treatment; however, the Board voted to issue an Advisory Letter in that case. Dr. Petelin questioned how the Board would benefit from inviting the physician for a Formal Interview as he believed this case does not rise to the level of discipline.

VOTE: 3-yay, 7-nay, 0-abstain, 0-recuse, 2-absent.

MOTION FAILED.

MOTION: Dr. Schneider moved to issue an Advisory Letter for failing to confirm the treatment plan and for failure to perform the appropriate and correct procedure. This was a one time occurrence that does not rise to the level of discipline.

SECONDED: Dr. Petelin

VOTE: 7-yay, 3-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
34.	MD-07-0714A	ROBERT B. CRAVENS, M.D.	20145	Issue an Advisory Letter for failing to maintain adequate medical records. This was a one time occurrence that does not rise to the level of discipline.

AB spoke during the call to the public.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
35.	MD-07-1063A	SUSANA K. MYUNG, M.D.	35425	Issue an Advisory Letter for failing to recommend a lower dose of Lisinopril, failing to document risks and benefits for Lisinopril, and for failing to perform lab monitoring in a timely manner. This was a one time occurrence that does not rise to the level of discipline.

Dr. Myung and attorney Mary Prior spoke during the call to the public. Dr. Mackstaller stated that in a patient with underlying renal disease, an ACE inhibitor should be started, but in a low dose such as 5 or 10 mg. Dr. Myung's starting dose was 20 mg.

MOTION: Dr. Lee moved to issue an Advisory Letter for failing to recommend a lower dose of Lisinopril, failing to document risks and benefits of Lisinopril, and for failing to perform lab monitoring in a timely manner. This was a one time occurrence that does not rise to the level of discipline.

SECONDED: Dr. Mackstaller

VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
36.	MD-08-0071A	TANIA HADDAD, M.D.	31943	Issue an Advisory Letter for failure to follow the difficult airway algorithm. This was a one time occurrence that does not rise to the level of discipline.

Dr. Mackstaller questioned whether Dr. Haddad followed appropriate protocol in this case. Dr. Lee stated that anesthesia protocol varies over time and has recently been modified.

MOTION: Dr. Mackstaller moved to issue an Advisory Letter for failure to follow the difficult airway algorithm. This was a one time occurrence that does not rise to the level of discipline.

SECONDED: Ms. Proulx

Dr. Petelin noted that a Formal Interview was scheduled for Thursday, December 4th regarding a similar issue, but the outcome in this case was more devastating. Dr. Martin stated that the Board should always strive for consistency; however, each case is based upon its own merits. Dr. Petelin suggested Dr. Haddad obtain non-disciplinary CME hours in management of difficult airways. Dr. Peairs stated that there were three minutes between the obstruction and the patient's arrest until the tracheotomy was performed. She stated that there were extenuating circumstances involved when the code was called.

VOTE: 9-yay, 1-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
37.	MD-08-0084A	KARL GATHOF, M.D.	13954	Dismiss.

Dr. Gathof spoke during the call to the public. Kathleen Coffey, M.D., Medical Consultant, summarized that Dr. Gathof signed off on several treatment plans for the patient, but never saw the patient. Dr. Mackstaller stated it seemed as though Dr. Gathof was accepting the patient into care. Dr. Coffey pointed out that SIRC found significant systemic issues involved in this case.

MOTION: Dr. Petelin moved to issue an Advisory Letter for failure to maintain adequate medical records. This matter does not rise to the level of discipline.

SECONDED: Dr. Mackstaller

Dr. Schneider spoke against the motion and questioned how Dr. Gathof could have maintained records on a patient that he did not see. Dr. Krishna spoke against the motion and recommended dismissal. Dr. Petelin withdrew his motion.

MOTION: Dr. Krishna moved for dismissal.

SECONDED: Dr. Schneider

VOTE: 9-yay, 0-nay, 1-abstain, 0-recuse, 2-absent.

MOTION PASSED.

ADVISORY LETTERS WITH NON-DISCIPLINARY CME

MOTION: Dr. Martin moved to issue an Advisory Letter with non-disciplinary CME in item numbers 2 and 3.

SECONDED: Dr. Krishna

VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
1.	MD-07-1035A	JAMES M. HURLEY, M.D.	3191	Issue an Advisory Letter for prescribing Phenergan to a 14 month-old, for failing to do a complete physical examination, and for failure to maintain adequate medical records. This matter does not rise to the level of discipline. Within six months obtain 24 hours non-disciplinary CME in prescribing to pediatric and adult patients.

Dr. Petelin pulled this case for discussion and recommended broadening the CME to cover prescribing to adult patients as well as pediatric patients.

MOTION: Dr. Petelin moved to issue an Advisory Letter for prescribing Phenergan to a 14 month-old, for failing to do a complete physical examination, and for failure to maintain adequate medical records. This matter does not rise to the level of discipline. Within six months obtain 24 hours non-disciplinary CME in prescribing to pediatric and adult patients.

SECONDED: Ms. Ibáñez

VOTE: 10-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
2.	MD-08-0641A	DARRELL J. JESSOP, M.D.	23441	Issue an Advisory Letter for inadequate medical records. This matter does not rise to the level of discipline. Within six months obtain 15-20 hours non-disciplinary CME in recordkeeping.
3.	MD-07-0791A	RONALD E. PARFITT, M.D.	20680	Issue an Advisory Letter for failure to properly counsel a patient who was consistently noncompliant in taking opioid medication and for failing to provide sufficiently detailed instructions upon initiation of Methadone. This matter does not rise to the level of discipline. Within three months obtain 15-20 hours non-disciplinary CME in prescribing of controlled substances and 15-20 hours non-disciplinary CME in recordkeeping.

Dr. Lee was recused from this case.

REVIEW OF EXECUTIVE DIRECTOR DISMISSALS

MOTION: Dr. Mackstaller moved to uphold the ED Dismissal in item numbers 1, 4, 5, 6, 7, 8, 9, 11, 12, and 13.

SECONDED: Ms. Griffen

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
1.	MD-07-1090A	GAREY S. SIMMONDS, M.D.	23958	Uphold ED Dismissal.
2.	MD-07-0781A	HEIDI P. COX, M.D.	35468	Uphold ED Dismissal.
3.	MD-07-0781B	PATRICK V. BAILEY, M.D.	35682	Uphold ED Dismissal.

Attorney Renee Coury and YJ spoke during the call to the public regarding items #2 and #3.. Dr. Petelin stated he was concerned that the patient was not informed of the physician's experience with the procedure performed. He stated that it should be mandatory when a surgeon is performing his or her first few cases that the patient be informed of the lack of experience so that the patient can make an informed decision when consenting to the procedure. Dr. Martin proposed forming a Subcommittee to address the issue and outline the Board's concern. Dr. Pardo pointed out that the patient's family alleged that they were not informed; however, the physician stated that the family was well informed. Dr. Wolf informed the Board that he interviewed both physicians and found them both to be credible. He stated that Dr. Cox has extensive laparoscopic experience and that Dr. Bailey was formally trained and has more experience than Dr. Cox. Dr. Wolf also stated that none of the postoperative complications alleged by the patient's mother are documented in the patient's medical record. Ms. Ibáñez recognized a lack of communication between the providers and the patient's family. Dr. Lee recommended creating a mechanism in which a surgeon informs the patient of their surgical experience.

MOTION: Dr. Martin moved to uphold the Executive Director's Dismissal in item numbers 2 and 3.

SECONDED: Dr. Petelin

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

Dr. Martin instructed Board staff to place this issue on the Board's Offsite Meeting Agenda for further discussion.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
4.	MD-08-0253A	ALLEN R. RACZKOWSKI, M.D.	14675	Uphold ED Dismissal.
5.	MD-08-0253B	DAVID A. SUBER, M.D.	11616	Uphold ED Dismissal.
6.	MD-07-1129A	GERALD L. YOSPUR, M.D.	26372	Uphold ED Dismissal.
7.	MD-08-0604A	DANIEL F. RYCHLIK, M.D.	31797	Uphold ED Dismissal.
8.	MD-08-0728A	DORA E. WHITE, M.D.	10194	Uphold ED Dismissal.
9.	MD-08-0108A	MAQBOOL A. HALEPOTA, M.D.	31459	Uphold ED Dismissal.
10.	MD-08-0627A	AMANDA S. ROSS, M.D.	33644	Uphold ED Dismissal.

PW, DW, and CE spoke during the call to public on behalf of the complainant. Dr. Mackstaller found that Dr. Ross acted appropriately in this case and recommended upholding the Executive Director's decision to dismiss this case.

MOTION: Dr. Mackstaller moved to uphold the Executive Director's Dismissal.

SECONDED: Ms. Griffen

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
11.	MD-08-0631A	EVERETT J. ROGERS, M.D.	27747	Uphold ED Dismissal.
12.	MD-08-0445A	PETER C. AMENE, M.D.	28525	Uphold ED Dismissal.

PK spoke during the call to the public.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
13.	MD-08-0445B	GREGORY E. SNEEP, M.D.	26559	Uphold ED Dismissal.

PK spoke during the call to the public.

OTHER BUSINESS

MOTION: Dr. Petelin moved to accept the proposed consent agreement in item numbers 1, 2, 3, 4, 5, and 7.

SECONDED: Dr. Pardo

ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Ms. Griffen, Ms. Ibáñez, Dr. Lee, Dr. Mackstaller, Dr. Martin, Dr. Pardo, Dr. Petelin, Ms. Proulx and Dr. Schneider. The following Board members were absent: Drs. Goldfarb, Krishna and Lefkowitz.

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

MOTION: Dr. Schneider moved to approve the draft Findings of Fact, Conclusions of Law and Order in item numbers 9 and 10.

SECONDED: Ms. Proulx

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
1.	MD-07-1041A	BARRETT J. DAY, M.D.	17995	Accept Proposed Consent Agreement for a Letter of Reprimand for action taken by another state. Three Years Probation to run concurrently with the Louisiana Board Order.
2.	MD-08-0223A	ROBERT J. BROWNSBERGER, M.D.	23429	Accept Proposed Consent Agreement for a Letter of Reprimand for

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
				violation of a Board Order and habitual intemperance. Five Years Probation to participate in MAP.

Dr. Lee was recused from this case.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
3.	MD-07-0541A	RICHARD J. SCHAEFFER, M.D.	4736	Accept Proposed Consent Agreement for a Letter of Reprimand for prescribing large amounts of controlled substances without performing an adequate history and mental status examination and monitoring; for failure to document discussion of risks and benefits of prescription medication; and for failure to maintain adequate records. One Year Probation to obtain 15-20 hours CME in psychiatry, to be completed within six months. The CME shall be in addition to the hours required for the biennial renewal of medical license. Probation to include chart reviews and shall terminate upon the physician's successful completion of the CME and satisfactory chart reviews.
4.	MD-08-0384A	CHARLES A. BOLLMANN, M.D.	6020	Accept Proposed Consent Agreement for a Decree of Censure for failure to perform physical examinations and for failure to maintain adequate records. Ten Years Probation to include quarterly chart reviews. After five years, Dr. Bollmann may apply to the Board to request the Probation be terminated.
5.	MD-08-1289A	JOHN C. MORGAN, M.D.	25871	Accept Proposed Consent Agreement for Surrender of an active license.
6.	MD-07-1081A	CHRISTOPHER PUCA, M.D.	22330	Accept Proposed Consent Agreement for a Letter of Reprimand for writing multiple early refills of controlled substances, for failure to recognize signs of accelerated opioid noncompliance and possible drug abuse, and for failure to recognize the necessity of referral or close coordination of care with a psychiatrist or addictionologist. Two Years Probation to obtain 15-20 hours CME in pain management/opioid prescribing, to be completed within six months. Probation to include periodic chart reviews.

Dr. Jane Orient spoke during the call to the public. Dr. Peairs summarized that Dr. Puca treated this patient for approximately a five year period with controlled substances. She stated that Dr. Puca failed to address frequent early refills and the presence of two unexpected substances on drug screens. After the patient had been hospitalized for opioid overdose, diagnosed with addiction, and undergone detoxification, Dr. Puca continued to prescribe controlled substances and early refills to the patient. The patient was hospitalized for a second overdose and detoxification.

MOTION: Dr. Lee moved to accept the Proposed Consent Agreement for a Letter of Reprimand for writing multiple early refills of controlled substances, for failure to recognize signs of accelerated opioid noncompliance and possible drug abuse, and for failure to recognize the necessity of referral or close coordination of care with a psychiatrist or addictionologist. Two Years Probation to obtain 15-20 hours CME in pain management/opioid prescribing, to be completed within six months. Probation to include periodic chart reviews.

SECONDED: Dr. Petelin

ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Ms. Griffen, Ms. Ibáñez, Dr. Lee, Dr. Mackstaller, Dr. Martin, Dr. Pardo, Dr. Petelin, Ms. Proulx, and Dr. Schneider. The following Board members were absent: Drs. Goldfarb, Krishna, and Lefkowitz.

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
7.	MD-07-0917A	REGINALD M. SUTTON, M.D.	29166	Accept Proposed Consent Agreement for a Letter of Reprimand for failure to document multiple patient visits, for failure to document rationale for narcotic prescriptions on multiple occasions, for prescribing progestin containing compound for a patient who has undergone a hysterectomy and for failure to maintain adequate records.
8.	MD-07-0716A	ARLO B. BRAKEL, M.D.	32307	Approve draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand for habitual intemperance, diverting controlled substances, and for using controlled substances not prescribed to him by another physician. Five Years Probation to include participation in MAP. Dr. Brakel shall be given credit for the time he has participated in MAP under an Interim Consent Agreement, effective October 2, 2007.

Dr. Pardo requested that the language in the Order be changed to reflect that Dr. Brakel was diverting controlled substances.

MOTION: Dr. Pardo moved to approve the draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand for habitual intemperance, diverting controlled substances, and for using controlled substances not prescribed to him

by another physician. Five Years Probation to include participation in MAP. Dr. Brakel shall be given credit for the time he has participated in MAP under an Interim Consent Agreement, effective October 2, 2007.

SECONDED: Ms. Proulx

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
9.	MD-07-0985A	WILLIAM M. COCHRAN, M.D.	15469	Approve draft Findings of Fact, Conclusions of Law and Order for a Decree of Censure and Ten Years Probation for overprescribing acetaminophen without adequate rationale or appropriate monitoring, and for prescribing opioid and multiple psychoactive medications in an elderly patient resulting in medication induced hypersomnolence and for violation of his Board Order. Probation to include quarterly chart reviews and a Ten Year Practice Restriction from practicing chronic pain management that includes prescribing controlled substance medications for an ongoing chronic pain condition. Allowed controlled substance prescribing is limited to management of acute pain to include not more than a 30 day prescription of opioids with no refills or renewals. After five years, Dr. Cochran may apply to the Board to request the Practice restriction be lifted.
10.	MD-05-1211A	JAMES S. GOUGH, M.D.	7317	Approve draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand for failure to release records to a patient upon written authorization in a timely manner, for inappropriately including information regarding the treatment of family members in another patient's chart, for inadequate medical records, and for failure to properly evaluate and document patient examinations during the initial and follow up visits. One Year Probation to obtain a PACE evaluation, within six months, in general medical fund of knowledge,
11.	MD-07-1066A	JEAN M. MOON, M.D.	20256	Approve draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand for failing to personally evaluate a patient with severe pre-eclampsia.

Dr. Pardo requested that the language in the Order be changed to include the word "severe" before pre-eclampsia.

MOTION: Dr. Pardo moved to approve the draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand for failing to personally evaluate a patient with severe pre-eclampsia.

SECONDED: Ms. Proulx

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
12.	MD-03-0414A	JAMES T. CANAVAN, M.D.	19964	Modification of Board Order to terminate the MAP participation requirement.

Kathleen Muller, Physician Health Program, summarized that Dr. Canavan requested that his Order be modified to terminate the requirement to participate in MAP to allow credit for the time that he was privately monitored. Ms. Muller informed the Board that when Dr. Canavan was discharged from treatment there was no mechanism to place him in MAP. Ms. Muller stated that Dr. Canavan's anesthesia restriction will remain in effect.

MOTION: Dr. Lee moved for modification of the Board Order to terminate the MAP participation requirement.

SECONDED: Dr. Petelin

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
13.	MD-03-0246A	DAVID P. KNAPP, M.D.	22830	Deny request for termination of Board Order.

Sue Dana, Compliance Officer, summarized that numerous quality of care and professional conduct issues were identified when Dr. Knapp was issued his Board Order. She noted that his Order was to run in congruence with his California Board Order. Dr. Knapp's California Board Order has been terminated and; therefore, he has requested that the Board terminate his Arizona Order. Ms. Dana informed the Board that SIRC found Dr. Knapp's conduct to be egregious and recommended that his Order remain in effect.

MOTION: Dr. Petelin moved to deny request for termination of Board Order.

SECONDED: Ms. Ibáñez

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
14.	MD-08-1123A	EARL A. SURWIT, M.D.	11111	Accept Proposed Consent Agreement for License Reactivation and

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
				Five Years Probation for MAP participation and to obtain a treating psychiatrist and psychotherapist.

Dr. Mackstaller was recused from this case. Ms. Muller summarized that Dr. Surwit previously participated in MAP from 1989-1992. She stated that he relapsed and signed a Consent Agreement for License Inactivation with Cause and completed treatment in August 2008. She reported that Dr. Surwit has been in full compliance in MAP.

MOTION: Dr. Pardo moved to accept the Proposed Consent Agreement for License Reactivation and Five Years Probation for MAP participation and to obtain a treating psychiatrist and psychotherapist.

SECONDED: Dr. Petelin

ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Ms. Griffen, Ms. Ibáñez, Dr. Lee, Dr. Martin, Dr. Pardo, Dr. Petelin, Ms. Proulx, and Dr. Schneider. The following Board member was recused: Dr. Mackstaller. The following Board members were absent: Drs. Goldfarb, Krishna, Lefkowitz

VOTE: 8-yay, 0-nay, 0-abstain, 1-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
15.	MD-08-0706A	JAMES F. GANEM, M.D.	16666	Dismiss.

Dr. Petelin stated he was concerned that Dr. Ganem attempted to place a stent in this patient's coronary artery when an attempt had been unsuccessful four months previously. He noted that the procedure resulted in a right coronary artery perforation. Dr. Mackstaller stated that it is not uncommon for cardiac surgeons to attempt procedures shortly after a failed attempt.

MOTION: Dr. Schneider moved for dismissal.

SECONDED: Dr. Lee

VOTE: 8-yay, 1-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
16.	MD-08-0766A	PANKAJ M. JAIN, M.D.	32772	Dismiss.

Dr. Petelin stated that the patient should have been informed that Dr. Jain was the surgeon of record and provided his level of experience in performing the robotic surgery.

MOTION: Ms. Ibáñez moved for dismissal.

SECONDED: Dr. Schneider

VOTE: 8-yay, 1-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
17.	MD-07-0817A	BELAL M. SHARAF, M.D.	33197	Approve draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand for altering medical records, falsifying medical records sent to the Board, failing to order a timely follow up Dilantin level after dosage change, for failing to timely address abnormal lab review in the records and for inadequate medical records.

MOTION: Dr. Pardo moved to approve the draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand for altering medical records, falsifying medical records sent to the Board, failing to order a timely follow up Dilantin level after dosage change, for failing to timely address abnormal lab review in the records and for inadequate medical records.

SECONDED: Ms. Ibáñez

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
18.	MD-97-0167 MD-97-0524	KENNETH M. FISHER, M.D.	12762	Termination of Board Order.

Ms. Dana summarized that in April 1996, Dr. Fisher received a Board Order for inappropriate sexual misconduct while examining a patient. She stated that in November 1999, Dr. Fisher was issued an indefinite Order for violating his Board Order on several occasions. Dr. Fisher underwent treatment in 2006 and has subsequently undergone another psychosexual evaluation in which it was determined that Dr. Fisher is safe to practice. Ms. Dana reported that Dr. Fisher's attorney has assured Board staff that Dr. Fisher will continue to use a chaperone when seeing patients.

MOTION: Dr. Lee moved to terminate the Board Order.

SECONDED: Dr. Petelin

Dr. Martin stated that these are difficult cases for the Board and that the Board's primary concern is, and continues to be, protecting the public. He found that Dr. Fisher has demonstrated compliance through rehabilitation and that the Board has

documented assurances that Dr. Fisher is safe to practice. Dr. Martin spoke in support of the motion to terminate his Board Order.

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

WEDNESDAY, DECEMBER 3, 2008

CALL TO ORDER

The meeting was called to order at 8:30 a.m.

ROLL CALL

The following Board members were present: Dr. Goldfarb, Ms. Griffen, Ms. Ibáñez, Dr. Krishna, Dr. Lee, Dr. Mackstaller, Dr. Martin, Dr. Pardo, Dr. Petelin, Ms. Proulx and Dr. Schneider. The following Board member was absent: Dr. Lefkowitz.

MOTION: Dr. Pardo moved to enter into executive session to receive legal advice.

SECONDED: Dr. Lee

Vote: 11-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

The Board went into executive session for legal advice at 8:31 a.m.

The Board returned to open session at 8:39 a.m.

No deliberations or discussions were made during executive session.

CALL TO THE PUBLIC

Attorney Paul Giancola addressed the Board on behalf of a case involving David Greene, M.D., that is currently pending rehearing at the Office of Administrative Hearings. He requested that the Board consider allowing Dr. Greene the opportunity to enter into a Consent Agreement for Stayed Revocation and Probation to include an indefinite Practice Restriction prohibiting him from practicing operative medicine. He also requested that the Board instruct staff to put this matter on the February meeting agenda for further discussion.

Jane M. Orient, M.D., addressed the Board regarding a case involving Carol Henricks, M.D., that was considered at the Board's October 2008 meeting. She stated the minutes reflecting the Board's discussion of that case made assertions as to whether Dr. Henricks has the ability to safely practice. She commented that Dr. Henricks is an outstanding neurologist and requested that the Board dismiss Dr. Henricks' case and correct the minutes to remove that language.

SP addressed the Board regarding Drs. Michelle and Albert Carlotti. She stated that their laser equipment is not registered with the Arizona Radiation Regulatory Agency. She requested that the Board expeditiously investigate cases pending against the Carlottis to prevent patients from suffering financially in court when seeking law suits against the physicians.

All other individuals who spoke during the call to the public appear beneath the case referenced.

FORMAL HEARING MATTERS – CONSIDERATION OF ADMINISTRATIVE LAW JUDGE (ALJ) RECOMMENDED DECISION

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
1.	MD-06-0308A	RICHARD D. DAVIS, M.D.	29315	Adopt and modify the ALJ's recommended Order for Revocation, to include Formal Hearing costs.

Board members indicated that they received and reviewed the administrative record of the Formal Hearing. Marki Stewart, Outside Counsel, summarized that Dr. Davis' Idaho medical license was revoked due to his child pornography conviction. She reported that Dr. Davis is currently serving a prison sentence and recommended the Board adopt the ALJ's recommended decision with minor changes that include assessing Formal Hearing costs.

MOTION: Dr. Goldfarb moved to adopt the ALJ's recommended Findings of Fact, as modified, and the Conclusions of Law.

SECONDED: Ms. Griffen

VOTE: 11-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

MOTION: Dr. Goldfarb moved to adopt and modify the ALJ's recommended Order for Revocation, to include Formal Hearing costs.

SECONDED: Ms. Griffen

ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Dr. Goldfarb, Ms. Griffen, Ms. Ibáñez, Dr. Krishna, Dr. Lee, Dr. Mackstaller, Dr. Martin, Dr. Pardo, Dr. Petelin, Ms. Proulx and Dr. Schneider. The following Board member was absent: Dr. Lefkowitz.

VOTE: 11-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
2.	MD-05-1208A	MAHENDRA NATH, M.D.	10234	Reject the ALJ's recommended Order for Dismissal and Revoke the physician's license. Assess Formal Hearing costs, not to exceed \$5,000.

Board members indicated that they received and reviewed the administrative record of the Formal Hearing. Michael Sillyman, Outside Counsel, summarized that Dr. Nath was issued an Order by the California Medical Board for sexual battery that involved several female patients. Mr. Sillyman requested that the Board adopt and modify the ALJ's recommended Order to change Finding of Fact #10 and Conclusions of Law #3.

MOTION: Dr. Krishna moved to adopt the ALJ's recommended Findings of Fact, as modified.

SECONDED: Dr. Pardo

VOTE: 11-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

MOTION: Dr. Krishna moved to adopt the ALJ's recommended Conclusions of Law, as modified.

SECONDED: Dr. Petelin

VOTE: 11-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

MOTION: Dr. Krishna moved to reject the ALJ's recommended Order for Dismissal and Revoke the physician's license. Assess Formal Hearing costs, not to exceed \$5,000.

SECONDED: Ms. Proulx

Dr. Lee noted that the ALJ recommended dismissing the charges against Dr. Nath as battery, in and of itself, is not considered an act of moral turpitude. However, the Board believes that the underlying reasons for the battery are issues of moral turpitude.

ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Dr. Goldfarb, Ms. Griffen, Ms. Ibáñez, Dr. Krishna, Dr. Lee, Dr. Mackstaller, Dr. Martin, Dr. Pardo, Dr. Petelin, Ms. Proulx, and Dr. Schneider. The following Board member was absent: Dr. Lefkowitz.

VOTE: 11-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
3.	MD-07-0268A MD-07-1136A MD-08-0078A	GREGORY MUHAMMAD, M.D.	24245	Adopt and modify the ALJ's recommended Order for Revocation, to include Formal Hearing costs.

RT spoke during the call to the public. Board members indicated that they received and reviewed the administrative record of the Formal Hearing. Jennifer Boucek, Assistant Attorney General asked that the Board adopt the ALJ's recommended Order in its entirety and modify to include Formal Hearing costs.

MOTION: Dr. Krishna moved to adopt the ALJ's recommended Findings of Fact and Conclusions of Law.

SECONDED: Dr. Lee

VOTE: 11-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

MOTION: Dr. Krishna moved to adopt and modify the ALJ's recommended Order for Revocation, to include Formal Hearing costs.

SECONDED: Dr. Lee

ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Dr. Goldfarb, Ms. Griffen, Ms. Ibáñez, Dr. Krishna, Dr. Lee, Dr. Mackstaller, Dr. Martin, Dr. Pardo, Dr. Petelin, Ms. Proulx, and Dr. Schneider. The following Board member was absent: Dr. Lefkowitz.

VOTE: 11-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

OTHER BUSINESS

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
1.	MD-04-0380A MD-07-0853A	RONALD E. SHERER, M.D.	19367	Rescind referral to Formal Hearing and reoffer a Proposed Consent Agreement for Stayed Revocation. Request Dr. Sherer to declare an area in which he intends to practice and then undergo a PACE evaluation in that practice area. The matter will return to the Board.

Emma Mamaluy, Assistant Attorney General informed the Board that Dr. Sherer has agreed to a lifetime restriction from practicing obstetrics and a ten year restriction from practicing pain management. She stated that in the event that another case comes

before the Board and Dr. Sherer is found in violation of the Arizona Medical Practice Act, his license would automatically be revoked. Board members expressed their concern that Dr. Sherer could enter into another field of medicine without having experience or training in that particular field and questioned whether he should undergo a PACE evaluation. Dr. Goldfarb recommended Dr. Sherer declare an area in which he intends to practice and then undergo a PACE evaluation in that practice area. Dr. Goldfarb requested that the matter return to the Board for further consideration after Dr. Sherer completes PACE.

MOTION: Dr. Goldfarb moved to rescind referral to Formal Hearing and reoffer a Proposed Consent Agreement for Stayed Revocation. Request Dr. Sherer to declare an area in which he intends to practice and then undergo a PACE evaluation in that practice area. The matter will return to the Board.

SECONDED: Ms. Griffen

ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Dr. Goldfarb, Ms. Griffen, Ms. Ibáñez, Dr. Krishna, Dr. Lee, Dr. Mackstaller, Dr. Martin, Dr. Pardo, Dr. Petelin, Ms. Proulx and Dr. Schneider. The following Board member was absent: Dr. Lefkowitz.

VOTE: 11-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
2.	MD-05-0351A	JASON M. BELLAK, M.D.	29914	Rescind referral to Formal Hearing and accept Proposed Consent Agreement for Stayed Revocation and Five Years Probation, effective July 20, 2005, to run concurrently with the Wisconsin Board Order.

Dr. Bellak was present without legal counsel. Ms. Mamaluy summarized that Dr. Bellak was found to have committed acts of unprofessional conduct in Wisconsin, none of which involved patient care. Ms. Mamaluy stated that Dr. Bellak has been in full compliance with his Wisconsin probation that began in July 2005. She requested that the Board rescind the referral to Formal Hearing and accept the Proposed Consent Agreement for Stayed Revocation. Ms. Mamaluy informed the Board that if Dr. Bellak violates any terms of his Wisconsin Order and after a Formal Interview or Hearing, his license would automatically be revoked. Dr. Bellak stated that he takes full responsibility for his unprofessional behavior. He stated that he was never impaired at work and would never put his patients in danger.

MOTION: Dr. Krishna moved to rescind referral to Formal Hearing and accept Proposed Consent Agreement for Stayed Revocation and Five Years Probation, effective July 20, 2005, to run concurrently with the Wisconsin Board Order.

SECONDED: Dr. Schneider

ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Dr. Goldfarb, Ms. Griffen, Ms. Ibáñez, Dr. Krishna, Dr. Lee, Dr. Mackstaller, Dr. Martin, Dr. Pardo, Dr. Petelin, Ms. Proulx and Dr. Schneider. The following Board member was absent: Dr. Lefkowitz.

VOTE: 11-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
3.	MD-02-0676A MD-03-1040C MD-04-0601A	DWIGHT C. LUNDELL, M.D.	6960	Deny motion for rehearing or review.

Ms. Stewart summarized that Dr. Lundell's motion raised two issues involving the Board's expert failing to testify to a deviation from the standard of care and that there were admitted errors in the Board's SIRC report. Ms. Stewart stated that both of the Board's experts testified that Dr. Lundell deviated from the standard of care in four patients' cases. In addition, she stated that the misstatements on the SIRC report are immaterial to the case and was not relied upon at the Formal Hearing by the ALJ.

MOTION: Dr. Krishna moved to deny the motion for rehearing or review.

SECONDED: Ms. Ibáñez

VOTE: 11-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
4.	MD-07-0549A	RICHARD A. WAGNER, M.D.	26957	Grant motion for review of Finding of Fact number 7.

Dr. Wagner was present with counsel, Mr. David Hill. Dr. Goldfarb stated that he knows Mr. Hill, but it would not affect his ability to adjudicate the case. Mr. Hill stated that Dr. Wagner was denied his due process rights when he appeared for Formal Interview. He stated that Dr. Wagner was not provided with adequate notice regarding the possibility of negligence in his response to the patient's reaction to Toradol; however, this was included in the Board's Finding of Fact #7. Mr. Hill also stated that he was troubled by the Board's apparent presumption that if something is not documented, it did not occur.

MOTION: Dr. Martin moved to enter into executive session for legal advice.

SECONDED: Dr. Goldfarb

VOTE: 11-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

The Board went into executive session at 2:25 p.m.
The Board returned to open session at 2:37 p.m.
No deliberations or discussions were made during executive session.

MOTION: Dr. Goldfarb moved to grant the motion for review of the Findings of Fact.
SECONDED: Dr. Mackstaller

Dr. Lee spoke against the motion and stated that the review should be limited to Finding of Fact #7.

VOTE: 4-yay, 4-nay, 2-abstain, 0-recuse, 2-absent.
MOTION FAILED.

MOTION: Dr. Lee moved to grant the motion for review of Finding of Fact #7.
SECONDED: Ms. Ibáñez
VOTE: 6-yay, 2-nay, 2-abstain, 0-recuse, 2-absent.
MOTION PASSED.

Ms. Boucek informed the Board that Board staff will place the item on a future agenda for the Board to consider, discuss and then deliberate on the Finding of Fact #7. She clarified that the Board would be presented with the same record that was considered in the Board's previous action.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
5.	MD-07-0504A	ANDREW J. APPEL, M.D.	33956	Deny motion for rehearing or review.

Attorney Steve Myers was present on behalf of Dr. Appel. He stated that Dr. Appel appeared for a Formal Interview in June 2008. He stated that during the interview, Dr. Appel was pressed approximately fourteen times to admit that based upon CT scan alone, a pedicle screw was misplaced. Mr. Myers stated that the Board's deliberations went further than the issues that the physician was noticed upon.

MOTION: Dr. Martin moved to enter into executive session for legal advice.
SECONDED: Ms. Proulx
VOTE: 11-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

The Board went into executive session at 2:51 p.m.
The Board returned to open session at 2:58 p.m.
No deliberations or discussions were made during executive session.

MOTION: Dr. Martin moved to deny the motion for rehearing or review.
SECONDED: Ms. Ibáñez
VOTE: 9-yay, 0-nay, 1-abstain, 0-recuse, 2-absent.
MOTION PASSED.

FORMAL INTERVIEWS

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
1.	MD-08-0095A	SHAHZAD HASAN, M.D.	33716	Draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand for failing to respond promptly to a patient's deteriorating condition and for failing to follow up on an order to draw a PT/INR promptly.

Dr. Hasan was present without legal counsel. Kathleen Coffey, M.D., Medical Consultant, summarized that Dr. Hasan failed to respond promptly to a patient's deteriorating condition and failed to follow up on an order to draw a PT/INR promptly. Dr. Hasan stated that when he first saw the patient, he ordered a STAT PT/INR; however, the order was not carried out. He did not believe that obtaining the study in a timelier manner would have changed the eventual outcome. Dr. Hasan reported that his practice has changed in that he follows up on tests he orders more aggressively. Dr. Petelin was concerned that Dr. Hasan missed two opportunities to discover that the patient was anticoagulated and opined that Dr. Hasan should have been more aggressive and urgent in his approach in this case. Dr. Hasan explained that in hindsight he would have followed up on his order and admitted the patient to the intensive care unit. Dr. Mackstaller was concerned that the PT/INR was delayed by eleven hours and that there was miscommunication with the nursing staff. She found that the study was not followed up promptly and that Dr. Hasan failed to properly respond to the patient's deteriorating condition.

MOTION: Dr. Mackstaller moved for a finding of unprofessional conduct in violation of A.R.S. §32-1401(27)(q) - Any conduct that is or might be harmful or dangerous to the health of the patient or the public.
SECONDED: Dr. Petelin
VOTE: 11-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

Dr. Mackstaller noted that Dr. Hasan has no prior Board history.

MOTION: Dr. Mackstaller moved to issue an Advisory Letter for failing to respond promptly to a patient's deteriorating condition and for failing to follow up on an order to draw a PT/INR promptly. This was a technical violation that does not rise to the level of discipline.

SECONDED: Dr. Martin

Dr. Mackstaller recognized that Dr. Hasan was not immediately notified of the patient's status by the nursing staff. However, Dr. Mackstaller stated that it was Dr. Hasan's responsibility to follow up on a test that he ordered.

ROLL CALL VOTE: Roll call vote was taken and the following Board member voted in favor of the motion: Dr. Mackstaller. The following Board members voted against the motion: Dr. Goldfarb, Ms. Griffen, Ms. Ibáñez, Dr. Krishna, Dr. Lee, Dr. Martin, Dr. Pardo, Dr. Petelin, Ms. Proulx and Dr. Schneider. The following Board member was absent: Dr. Lefkowitz.

VOTE: 1-yay, 10-nay, 0-abstain, 0-recuse, 1-absent.

MOTION FAILED.

MOTION: Dr. Mackstaller moved for a draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand for failing to respond promptly to a patient's deteriorating condition and for failing to follow up on an order to draw a PT/INR promptly.

SECONDED: Dr. Martin

ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Dr. Goldfarb, Ms. Griffen, Ms. Ibáñez, Dr. Krishna, Dr. Lee, Dr. Mackstaller, Dr. Martin, Dr. Pardo, Dr. Petelin, Ms. Proulx and Dr. Schneider. The following Board member was absent: Dr. Lefkowitz.

VOTE: 11-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.

MOTION PASSED.

Board staff was instructed to refer this matter to the Arizona Board of Nursing.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
2.	MD-07-1130A	ERNEST R. ANDERS, M.D.	24202	Issue an Advisory Letter for charging for services not rendered. The physician has demonstrated compliance through rehabilitation that mitigates the need for discipline; however, if the conduct continues, it may result in further Board action.

AC spoke during the call to the public. Dr. Anders was present with legal counsel, Mr. Gary Fadell. Vicki Johansen, Case Manager, summarized that Dr. Anders was changing the clocks in the operating and recovery rooms, resulting in fraudulent overbilling and the charging for services not rendered. Ms. Johansen also reported that Dr. Anders made a false statement in the practice of medicine. Dr. Anders stated that he has been honest with the Board and that his actions were not fraudulent or deceptive. He informed the Board that he has been diagnosed with obsessive compulsive disorder (OCD) for which he is currently undergoing treatment. Dr. Anders stated that he would synchronize the time from the recovery room to the operating room clock in order to control the time. In addition, Dr. Anders stated that monetary gain was not the reason for his conduct and that he did not begin changing the clocks until October 2007.

Dr. Petelin was concerned that Dr. Anders changed the clocks discretely when no one was around and that the net result over a relatively short period of time was a significant amount of money. Dr. Krishna questioned whether Dr. Anders would change the clocks at his home as well as the operating room. Dr. Anders stated that he did not change the clocks elsewhere. He reported to the Board that he is currently taking Paxil and has been undergoing behavior modifications. Dr. Martin questioned why Dr. Anders was not under the care of the Physician Health Program under a confidential order. Ms. Wynn informed the Board that physicians are monitored confidentially when there is no quality of care concerns or unprofessional conduct violations. In closing, Mr. Fadell stated that complaints were initiated at both the Federal and State levels and that the Federal complaint has been resolved in a settlement agreement. Mr. Fadell reported that Dr. Anders has taken a course in billing and pointed out that there were no quality of care concerns involved in this case. Dr. Lee stated that he did not find Dr. Anders' conduct to be fraudulent and noted significant extenuating circumstances in his medical group that prevented him from addressing the issue within the group.

MOTION: Dr. Krishna moved for a finding of unprofessional conduct in violation of A.R.S. §32-1401(27)(t) - Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of medicine or if applying for privileges or renewing an application for privileges at a health care institution; and A.R.S. §32-1401(27)(u) - Charging a fee for services not rendered or dividing a professional fee for patient referrals among health care providers or health care institutions or between these providers and institutions or a contractual arrangement that has the same effect.

SECONDED: Ms. Griffen

Dr. Martin spoke in favor of the motion. Dr. Lee was concerned with the finding of unprofessional conduct in violation of A.R.S. §32-1401(27)(u). Dr. Krishna stated that due to Dr. Anders' conduct, the time in the operating room was prolonged. Dr. Petelin

spoke against any motion less than discipline as he did not see any psychiatric report regarding the severity of Dr. Anders' OCD. Dr. Petelin found Dr. Anders' conduct to be egregious.

VOTE: 3-yay, 8-nay, 0-abstain, 0-recuse, 1-absent.
MOTION FAILED.

MOTION: Dr. Petelin moved for a finding of unprofessional conduct in violation of A.R.S. §32-1401(27)(u)-Charging a fee for services not rendered or dividing a professional fee for patient referrals among health care providers or health care institutions or between these providers and institutions or a contractual arrangement that has the same effect; and A.R.S. §32-1401(27)(v) Obtaining a fee by fraud, deceit or misrepresentation.

SECONDED: Ms. Ibáñez

VOTE: 4-yay, 6-nay, 1-abstain, 0-recuse, 1-absent.
MOTION FAILED.

MOTION: Dr. Lee moved to issue an Advisory Letter for altering operating room clocks. The physician has demonstrated remediation through rehabilitation that mitigates the need for discipline; however, if the conduct continues, it may result in further board action.

SECONDED: Ms. Griffen

Dr. Mackstaller spoke against the motion and stated that there is evidence to support a finding that Dr. Anders committed unprofessional conduct. Dr. Petelin stated he believed Dr. Anders' conduct was for monetary gain. Dr. Lee reiterated that he did not believe that Dr. Anders had the intent of financial gain. Dr. Krishna spoke against the motion.

ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Ms. Griffen, Dr. Lee, Dr. Pardo, and Ms. Proulx. The following Board members voted against the motion: Dr. Goldfarb, Ms. Ibáñez, Dr. Krishna, Dr. Mackstaller, Dr. Martin, Dr. Petelin and Dr. Schneider. The following Board member was absent: Dr. Lefkowitz.

VOTE: 4-yay, 7-nay, 0-abstain, 0-recuse, 1-absent.
MOTION FAILED.

MOTION: Dr. Goldfarb moved for a finding of unprofessional conduct in violation of A.R.S. §32-1401(27)(u)-Charging a fee for services not rendered or dividing a professional fee for patient referrals among health care providers or health care institutions or between these providers and institutions or a contractual arrangement that has the same effect.

SECONDED: Dr. Petelin

VOTE: 7-yay, 3-nay, 1-abstain, 0-recuse, 1-absent.
MOTION PASSED.

MOTION: Dr. Martin moved to issue an Advisory Letter for charging for services not rendered. The physician has demonstrated compliance through rehabilitation that mitigates the need for discipline; however, if the conduct continues, it may result in further Board action.

Dr. Petelin spoke against the motion and stated that this case rises to the level of discipline. Dr. Martin withdrew his motion.

MOTION: Dr. Pardo moved to issue an Advisory Letter for charging for services not rendered. The physician has demonstrated compliance through rehabilitation that mitigates the need for discipline; however, if the conduct continues, it may result in further Board action.

SECONDED: Ms. Proulx

ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Dr. Goldfarb, Ms. Griffen, Ms. Ibáñez, Dr. Lee, Dr. Mackstaller, Dr. Pardo, Ms. Proulx and Dr. Schneider. The following Board members voted against the motion: Drs. Krishna and Petelin. The following Board member abstained: Dr. Martin. The following Board member was absent: Dr. Lefkowitz.

VOTE: 8-yay, 2-nay, 1-abstain, 0-recuse, 1-absent.
MOTION PASSED.

THURSDAY, DECEMBER 4, 2008

CALL TO ORDER

The meeting was called to order at 8:30 a.m.

ROLL CALL

The following Board members were present: Ms. Griffen, Ms. Ibáñez, Dr. Lee, Dr. Mackstaller, Dr. Martin, Dr. Pardo, Dr. Petelin, Ms. Proulx, and Dr. Schneider. The following Board members were absent: Drs. Goldfarb, Krishna and Lefkowitz.

CALL TO THE PUBLIC

Statements issued during the call to the public appear beneath the case referenced.

FORMAL INTERVIEWS

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
1.	MD-07-0845A	CHARLES MATLIN, M.D.	13975	Issue an Advisory Letter for performing laparoscopic Nissen fundoplication without proper indication for the procedure. There is insufficient evidence to support discipline.

Dr. Matlin was present with legal counsel, Mr. Stephen Yost. Dr. Martin stated that he knows Dr. Matlin, but it would not affect his ability to adjudicate the case. Dr. Petelin stated that he knows Mr. Yost and Dr. Matlin, but it would not affect his ability to adjudicate the case. William Wolf, M.D., Chief Medical Consultant, summarized that Dr. Matlin performed a laparoscopic Nissen fundoplication without proper indications. Dr. Matlin stated that he believed the patient had clear indications for the procedure. Dr. Petelin questioned whether Dr. Matlin considered that Bulimia may have contributed to the finding of gastric acid on the patient's vocal cords. Dr. Matlin explained that Bulimia was not a documented diagnosis in the patient's previous medical records. In closing, Mr. Yost stated that this patient had not been referred for psychiatric or psychologic consultation by any previous providers for Bulimia. Mr. Yost stated that Dr. Matlin performed the procedure correctly and adequately followed up the patient postoperatively. Dr. Wolf opined that PH monitoring should have been conducted prior to performing the procedure. Dr. Petelin found that a laparoscopic Nissen fundoplication was performed without proper indications. Dr. Wolf summarized Dr. Matlin's prior Board history.

MOTION: Dr. Petelin moved for a finding of unprofessional conduct in violation of A.R.S. §32-1401(27)(q) - Any conduct that is or might be harmful or dangerous to the health of the patient or the public.

SECONDED: Dr. Martin

Dr. Petelin opined that psychiatric issues should have been considered and investigated prior to surgical intervention. Drs. Mackstaller and Schneider spoke against the motion. Dr. Schneider found it mitigating that two other providers noted the gastric acid on the vocal cords and that the patient's insurance company denied a psychiatric consultation request.

VOTE: 3-yay, 6-nay, 0-abstain, 0-recuse, 3-absent.

MOTION FAILED.

Dr. Mackstaller did not believe that Dr. Matlin deviated from the standard of care in this case.

MOTION: Dr. Mackstaller moved for dismissal.

SECONDED: Ms. Griffen

Dr. Petelin spoke against dismissal and recommended the Board issue Dr. Matlin an Advisory Letter as there is insufficient evidence to support discipline. Dr. Mackstaller withdrew her motion.

MOTION: Dr. Mackstaller moved to issue an Advisory Letter for performing a laparoscopic Nissen fundoplication without proper indication for the procedure. There is insufficient evidence to support discipline.

SECONDED: Dr. Petelin

Dr. Pardo spoke against the motion and noted Dr. Matlin's prior Board history.

ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Ms. Griffen, Ms. Ibáñez, Dr. Lee, Dr. Mackstaller, Dr. Martin, Dr. Petelin, and Dr. Schneider. The following Board Member voted against the motion: Dr. Pardo. The following Board member was abstained: Ms. Proulx. The following Board members were absent: Drs. Goldfarb, Krishna, and Lefkowitz.

VOTE: 7-yay, 1-nay, 1-abstain, 0-recuse, 3-absent.

MOTION PASSED.

Mr. Yost readdressed the Board later that afternoon and stated that he and Dr. Matlin were concerned that the Board voted to issue an Advisory Letter based upon Dr. Matlin's prior Board history that was unrelated to the issue identified in this case. Mr. Yost stated that a prior similar offense may warrant an Advisory but that was not the case in this matter.

MOTION: Dr. Petelin moved to reopen this matter for discussion regarding the issuance of an Advisory Letter.

SECONDED: Dr. Pardo

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

Mr. Yost agreed to have the Board's minutes serve as the record for this discussion. Board staff noted for the record that they had inadvertently misstated some aspects of Dr. Matlin's prior Board history earlier in the day. Board staff then corrected those inaccuracies for the Board.

Dr. Martin requested Board members clarify whether or not their vote for issuing an Advisory Letter was solely based upon the belief that Dr. Matlin had similar issues in the past. Dr. Martin explained that his vote was not influenced by Dr. Matlin's prior Board history and that it was based upon the physician's testimony and the current issue at hand. Dr. Pardo spoke against issuing Dr. Matlin an Advisory Letter as she found that Dr. Matlin committed unprofessional conduct and believed that this case rises to the level of discipline. Dr. Petelin spoke in favor of issuing an Advisory Letter. He believed that the surgery was contraindicated as the reflux was not well demonstrated and the PH studies were normal. Dr. Petelin noted that in his response to the complaint, Dr. Matlin stated that he did not expect the fundoplication procedure to alleviate the patient's pain. Dr. Petelin stated that a surgeon does not have the right to recommend and proceed with a surgical procedure that he or she knows will not benefit the patient.

MOTION: Ms. Ibáñez moved for the Board to reconsider its previous action.

SECONDED: Dr. Lee

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

MOTION: Dr. Lee moved to issue an Advisory Letter for performing a laparoscopic Nissen fundoplication without proper indication of the procedure. There is insufficient evidence to support discipline.

SECONDED: Dr. Petelin

ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Ms. Griffen, Ms. Ibáñez, Dr. Lee, Dr. Mackstaller, Dr. Martin, Dr. Petelin and Dr. Schneider. The following Board member voted against the motion: Dr. Pardo. The following Board member abstained: Ms. Proulx. The following Board members were absent: Drs. Goldfarb, Krishna, and Lefkowitz.

VOTE: 7-yay, 1-nay, 1-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
2.	MD-07-1048A	MARIE MESAROS, M.D.	19738	Dismiss.

Dr. Lee was recused from this case. Dr. Petelin stated that he knows Dr. Mesaros, but it would not affect his ability to adjudicate the case. Dr. Mesaros was present with legal counsel, Ms. Judith Berman. Dr. Wolf summarized that Dr. Mesaros relied on breath sounds and movement of the anesthesia bag rather than utilizing capnography in an obese patient. In addition, Dr. Mesaros improperly used an intermediate rather than short acting muscle relaxant resulting in difficult mask ventilation and hypoxia. Dr. Mesaros stated that she followed the difficult airway algorithm and that patient safety is her primary goal. She believed that the intubation was safely achieved and that she used capnography to monitor the patient. In closing, Ms. Berman stated that the standard of care was met and that Dr. Mesaros reversed the paralytic agent timely. Ms. Berman informed the Board that Dr. Mesaros has obtained additional education in 2006 and 2008 by attending workshops on difficult airway management. Dr. Martin stated he found that Dr. Mesaros met the standard of care in this case.

MOTION: Dr. Martin moved for dismissal.

SECONDED: Dr. Petelin

ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Ms. Griffen, Ms. Ibáñez, Dr. Mackstaller, Dr. Martin, Dr. Pardo, Dr. Petelin, Ms. Proulx and Dr. Schneider. The following Board member was recused: Dr. Lee. The following Board members were absent: Drs. Goldfarb, Krishna, and Lefkowitz.

VOTE: 8-yay, 0-nay, 0-abstain, 1-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
3.	MD-07-0231A	JACK N. POLES, M.D.	8677	Dismiss.

Dr. Poles was present with legal counsel, Mr. Gary Fadell. Dr. Coffey summarized that Dr. Poles failed to obtain a proper cardiovascular history and physical in a patient with substernal chest pain and left arm pain, failed to offer dietary instructions and prescribed a lipid lowering agent to a patient with elevated lipids. In addition, Dr. Poles failed to obtain further diagnostic testing after noting an abnormal ECG and failed to maintain adequate medical records. Dr. Poles stated that he did not deviate from the standard of care and has instituted changes in his practice since this incident occurred. Dr. Poles explained that he did not consider coronary disease in this patient as she had evidence of an arthritic issue. In closing, Mr. Fadell stated that Dr. Poles met the standard of care in this case. Dr. Mackstaller pointed out that treadmill tests are widely known as to be notoriously inaccurate in women. She stated she believed Dr. Poles met the standard of care in this case.

MOTION: Dr. Mackstaller moved for dismissal.

SECONDED: Dr. Lee

ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Ms. Griffen, Ms. Ibáñez, Dr. Lee, Dr. Mackstaller, Dr. Martin, Dr. Petelin, Ms. Proulx, and Dr. Schneider. The following Board member abstained: Dr. Pardo. The following Board members were absent: Drs. Goldfarb, Krishna and Lefkowitz.

VOTE: 8-yay, 0-nay, 1-abstain, 0-recuse, 3-absent.
MOTION PASSED.

FORMAL INTERVIEWS

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
5.	MD-07-1069A	SAMER S. SANNOUFI, M.D.	33024	Referred to Formal Hearing at the Office of Administrative Hearings.

BF spoke during the call to the public. Dr. Sannoufi was not present; however, attorney Michael Golder was present on his behalf.

MOTION: Dr. Lee moved to enter into executive session to receive legal advice.

SECONDED: Dr. Pardo

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

The Board went into executive session for legal advice at 1:19 p.m.

The Board returned to open session at 1:28 p.m.

No deliberations or discussions were made during executive session.

Dr. Pardo commented that when a physician does not appear for a Formal Interview, the Board's position has been to refer the matter to Formal Hearing.

MOTION: Dr. Pardo moved to refer this matter to Formal Hearing at the Office of Administrative Hearings.

SECONDED: Ms. Griffen

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

OTHER BUSINESS

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
1.	MD-06-0308A	RICHARD D. DAVIS, M.D.	29315	Approve the proposed Board Order for Revocation. Assess Formal Hearing costs.

MOTION: Dr. Lee moved to approve the proposed Board Order for Revocation. Assess Formal Hearing costs.

SECONDED: Dr. Pardo

ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Ms. Griffen, Ms. Ibáñez, Dr. Lee, Dr. Mackstaller, Dr. Martin, Dr. Pardo, Dr. Petelin, Ms. Proulx and Dr. Schneider. The following Board members were absent: Drs. Goldfarb, Krishna, and Lefkowitz.

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
2.	MD-05-1208A	MAHENDRA NATH, M.D.	10234	Approve the proposed Board Order for Revocation. Assess Formal Hearing costs, not to exceed \$5,000.

MOTION: Dr. Lee moved to approve the proposed Board Order for Revocation. Assess Formal Hearing costs, not to exceed \$5,000.

SECONDED: Ms. Griffen

ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Ms. Griffen, Ms. Ibáñez, Dr. Lee, Dr. Mackstaller, Dr. Martin, Dr. Pardo, Dr. Petelin, Ms. Proulx and Dr. Schneider. The following Board members were absent: Drs. Goldfarb, Krishna, and Lefkowitz.

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
3.	MD-07-0268A MD-07-1136A MD-08-0078A	GREGORY MUHAMMAD, M.D.	24245	Approve the proposed Board Order for Revocation. Assess Formal Hearing costs.

MOTION: Ms. Ibáñez moved to approve the proposed Board Order for Revocation. Assess Formal Hearing costs.

SECONDED: Ms. Griffen

ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Ms. Griffen, Ms. Ibáñez, Dr. Lee, Dr. Mackstaller, Dr. Martin, Dr. Pardo, Dr. Petelin, Ms. Proulx and Dr. Schneider. The following Board members were absent: Drs. Goldfarb, Krishna, and Lefkowitz.

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

MOTION: Dr. Martin moved to enter into executive session for legal advice.

SECONDED: Dr. Pardo

VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.

MOTION PASSED.

The Board went into executive session for legal advice at 2:48.

The Board returned to open session at 3:02 p.m.

No deliberations or discussions were made during executive session.



The meeting adjourned at 3:24 p.m.

A handwritten signature in cursive script, appearing to read "Lisa S. Wynn".

Lisa S. Wynn, Executive Director